

If a charge is being made only for the transmission of electronic information, apart from a charge for canned computer software, no tangible personal property is being transferred and no Illinois sales tax or service tax would be incurred. See 86 Ill. Adm. Code 130.1935. (This is a GIL).

December 12, 2000

Dear Xxxxx:

This letter is in response to your letter our office received on September 11, 2000 regarding earlier correspondence you had sent to the Department. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your earlier letter, you have stated and made inquiry as follows:

I wasn't certain to whom I should address this letter, so I thought that I would send it to this address and hope that you would forward it to the proper person.

I am a tax practitioner and have purchased programs from COMPANY to use in my practice. The main program that I use is the Individual Tax Product for both the Federal and the State Tax Returns. I pay sales tax on this program. Also included in this program is an Electronic Filing software that is included free.

Whenever I use this program for either the federal or state Electronic Filing, I am charged an Electronic Filing TRANSMISSION FEE per return that is transmitted. I set up a dollar amount, such as \$100.00, to charge the transmission fee against it. When I use up this deposited amount, I contact COMPANY and have another amount set up to charge against.

COMPANY charges me sales tax on this deposited amount for transmission fees. I consider this a service and not a product and therefore should NOT be charged sales tax. Some states do charge sales tax on services but Illinois does not. I tried to explain that to them and they want to see something in writing from the Illinois Sales Tax Department.

The same is true on Pay-per-Return charges. Their Price list states that Pay-Per-Return software is 'no charge' and I pay a certain amount for each business return that I use. This charge per return is deducted from my deposited amount that I set up for my Electronic Filing charges.

Can you tell me whether or not any of these transmission charges or pay-per-return fees are taxable? Remember that I paid sales tax on the original unlimited individual tax

products and that the Electronic Filing is included free with the product that I purchased; also that the Pay-Per-Return software is 'no charge'.

Thank you for your help in resolving what is and what is not subject to sales tax on these transmission fees and pay-per-return charges.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased anywhere at retail from a retailer. 35 ILCS 105/3. These taxes comprise what is commonly known as "sales" tax in Illinois. Illinois also taxes any tangible personal property that is transferred incident to a sale of service under the Service Occupation Tax Act (35 ILCS 115/1 et seq.) and the Service Use Tax Act (35 ILCS 110/1 et seq.).

If a sale of service is made in Illinois and no tangible personal property of any kind is transferred incident to that sale of service, no sales tax or service tax would apply to that sale. Please note that, except for canned computer software as described in the enclosed copy of 86 Ill. Adm. Code 130.1935, information or documents that are electronically delivered do not generally constitute tangible personal property in this State.<sup>1</sup>

We cannot provide a specific answer to your questions in the context of a General Information Letter and with the limited information provided. However, if a charge is being made only for the transmission of electronic information, apart from a charge for canned computer software, no tangible personal property is being transferred and no Illinois sales tax or service tax would be incurred. We recommend that you contact COMPANY to find out if the tax it is collecting is purported to be Illinois sales or service tax. Based upon the limited information in your letter, we do not believe that this charge is for Illinois Telecommunications Excise Tax.<sup>2</sup>

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.

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<sup>1</sup> Canned computer software is considered tangible personal property regardless of the form in which it is transferred or transmitted. See subsection (a) of 86 Ill. Adm. Code 130.1935.

<sup>2</sup> The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495.